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November 17, 2000

Via Courier

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn. Ex Parte 582 (Sub- No. 1)
1925 K Street, NW
Washington, DC 20423-0001

Dear Sir or Madam:

Please find enclosed an original and 25 copies of the Reply Comments of the American Farm Bureau Federation in reference to the above matter.

Sincerely,

Richard W. Newpher
Executive Director
Washington Office

pc All Parties of Record

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Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn. Ex Parte 582 (Sub- No. 1)
1925 K Street, NW
Washington, DC 20423-0001

RE: DECISION EX. PARTE 582 (SUB-NO. 1), MAJOR RAIL CONSOLIDATION PROCEDURES

Dear Sirs:

The American Farm Bureau Federation is the nation's largest membership organization of family farmers and ranchers. The Farm Bureau's mission, in part, is to improve the economic welfare of farmers and ranchers by improving wherever possible economic conditions in which they do business. As such, Farm Bureau has taken an interest in transportation issues. Our policy is to work to ensure the maximum number of flexible and efficient transportation options for agricultural shippers. These shippers, usually for-profit or co-op purchasers of agricultural produce, must discount the price they offer farmers for the commodities they produce to account for the cost of transportation because the next-level wholesale purchaser of those commodities are free to source these commodities anywhere in the world. Thus, sellers of unprocessed or partially processed agricultural commodities are unable to pass transportation costs along to their customers and this cost is ultimately borne by farmers at the bottom of this economic chain.

In response to widespread concern in Congress, among shippers and among some railroad companies, the STB on October 3 proposed the above-referenced revision in its procedures to evaluate proposed rail consolidations. Among other things, the Board apparently recognized the importance of rail-to-rail competition in controlling shipper costs and improving railroads' service performance. Unfortunately, this recognition apparently did not lead the Board to propose meaningful and concrete changes to the procedure it employs to evaluate and approve or disapprove rail consolidations.

In the Farm Bureau's view, the Board's proposed procedural change is deficient in four principal areas:

- The proposed rulemaking misses the opportunity to mandate conditions that will improve competitive conditions for captive and near-captive shippers. We question why the Board has missed the opportunity presented by re-writing its merger rules to institute at least a limited program of access to permit rail-to-rail competition. At the proposed new § 1180.1(d), the Board notes that its new evaluation criteria will require merging railroads to specify how they will increase competitive opportunities, yet the Board takes no responsibility for ensuring that this will actually happen. The Board must shoulder this responsibility, because there is no other federal agency adequately equipped for the task and no other body to which shippers can turn to level the uneven playing field between them and Class I railroads. Clearly, if the Board has the authority to order a 15-month moratorium on rail merger proposals, it has the authority to impose meaningful competitive remedies if it chooses to do so.

- At § 1180.1(c)(2), the Board's new merger evaluation plan requires merging carriers to provide a plan to ensure that levels of service enjoyed by shippers prior to the merger will not suffer as a result of the merger. Inexplicably, the Board gives no indication of how to ensure that these plans actually come to fruition, rather than frustration, for shippers.
- The Board seems to understand the meaning of "competition" somewhat broadly, perhaps that so long as there is more than one railroad competing for the business of rail shippers in the global sense, there is effective competition. We are concerned that the Board may not be mindful that while systemic competition may be beneficial in a global sense, for a shipper faced with loss of one of three or two competitive rail carriers could be facing economic disaster. We strongly urge the Board to recognize this, and to pay special care to ensuring that 3-2 and 2-1 shippers benefit from a similar level of the Board's concern.
- While the Board addressed itself to so-called "transnational effects," it merely noted that it would include transnational effects as one of the discretionary factors the Board will consider in evaluating proposed mergers.

In effect, the Board has adopted a series of new, subjective factors it intends to use to evaluate prospective mergers and consolidations. These new criteria, according to the Board, are largely intended to prevent unintended anti-competitive consequences should future mergers be allowed to proceed, or to remedy the negative effects of any future mergers. Unfortunately, the Board has not seen fit to put any teeth into these criteria. There are, however, no anti-competitive or pro-competitive thresholds which merging railroads must cross in order to qualify as a merger the Board will approve. A failure on the part of a merged railroad to meet its competition enhancement plans will not result in any penalty to that railroad. No amount of regulatory intervention on the part of the Board will correct the economic damage that will result from the next UP-SP post-merger meltdown, or from a recurrence of the major service problems experienced by Conrail shippers after its carve-up between Norfolk Southern and CSX.

The Farm Bureau urges the Board to add some meaningful objective standards on which the Board will evaluate, and perhaps reject, future merger applications. Further, the Board must articulate meaningful post-merger performance standards and must accept the responsibility for requiring and enforcing conditions that will improve rather than retard competition.

Sincerely,

Richard W. Newpher
Executive Director
Washington Office

Certificate of Service

I hereby certify that this statement of the American Farm Bureau Federation has been duly served on all Parties of Record identified on the Ex Parte 582 (Sub- No. 1) service list via first class mail in the United States Postal Service this 17th day of November, 2000.

Richard W. Newpher
Executive Director
Washington Office